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The following is added as Paragraph 23.c. to the General Provisions (01/01/01):

- 23.c) Within ninety (90) days from the effective date of termination, unless this time frame is extended by the State, the Contractor shall submit a final termination settlement proposal to the State. The Contractor and the State may agree upon the whole or any part of the amount to be paid because of the termination.

Paragraph 24 and Paragraph 26 of the General Provisions (01/01/01) are hereby deleted and the following substituted therefore:

24. Termination for Default

- a) The State may, subject to the Force Majeure paragraph contained herein, by written notice of default to the contractor, terminate this contract in whole or in part if the contractor fails to:
 - i) Deliver the goods or to perform the services within the time specified in the contract or any amendment thereto;
 - ii) Make progress, so as to endanger performance of this contract (but see subparagraph (b) below); or
 - iii) Perform any of the other provisions of this contract (but see subparagraph (b), below).
- b) The State's right to terminate this contract under subparagraphs (a)(ii) and (a)(iii) above, may be exercised if the contractor does not cure such failure within the time frame stated in the cure notice issued by the buyer.
- c) If the contract is terminated for default, except for proprietary off-the-shelf software, the State may require the contractor to transfer title and deliver to the State, as directed by the buyer, any:
 - i) Completed goods, and
 - ii) Partially completed goods and materials, parts, plans, drawings, and information, (collectively referred to as "manufacturing materials" in this clause) that the contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the buyer, the contractor shall also protect and preserve property in its possession in which the State has an interest.
- d) The State shall pay contract price for completed goods and services delivered and accepted. The contractor and buyer shall agree on the amount of payment for manufacturing materials delivered and accepted by the State or protected and preserved at the direction of the State. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the buyer determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- e) The Contractor shall continue the work not terminated.
- f) If, after termination, it is determined that the contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.
- g) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract.

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26. RIGHTS AND REMEDIES OF STATE FOR DEFAULT:

- a) In the event any goods furnished or services provided by the contractor in the performance of the contract should fail to conform to the requirements herein, or to the sample submitted by the contractor, the State may reject the same, and it shall become the duty of the contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the State, and immediately replace all such rejected items with others conforming to the contract.
- b) The State may acquire, under the terms and in the manner the buyer considers appropriate, goods with the same or similar functionality and/or services similar to those terminated in accordance with Paragraph 24, and the Contractor will be liable to the State for the Cost to Cover for those goods and/or services not exceeding two (2) times the contract price of the goods and/or services terminated, or two (2) times the price of the contract if the contract is terminated in its entirety. "Cost to Cover" means the contract price the State pays for the replacement goods and/or services of equivalent (not greater) capability, function, and performance, less the contract price
- c) The State may require Contractor, at Contractor's expense, to ship goods or partially completed goods via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the contractor.
- d) The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to contractor or to make a claim against the contractor therefore.

Paragraph 28 of the General Provisions (01/01/01) is hereby deleted.

Paragraph 29.b) of the General Provisions (01/01/01) is hereby deleted.

Paragraph 36.a), 36.c) and 36.d) are hereby deleted and the following substituted therefore:

- 36.a) Contractor shall hold the State of California, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted composition, or patented invention, article or appliance furnished or used in connection with the contract.
- 36.c) Contractor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the goods or software supplied by the contractor or the operation of such goods pursuant to a current version of contractor supplied operating software infringes a patent or copyright or violates a trade secret. The contractor shall pay those costs and damages finally awarded against the State in any such action. Such defense and payment shall be conditioned on the following:
 - i) That the contractor shall be notified within a reasonable time in writing by the State of any notice of such claim; and,
 - ii) That the contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, the State shall have the option to participate in such action at its own expense.
- 36.d) Should the goods or software, or the operation thereof, become, or in the contractor's opinion are likely to become, the subject of a claim of infringement of a patent or copyright or a trade secret, the State shall permit the contractor at its option and expense either to procure for the State the right to continue using the goods or software,

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or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such goods or software by the State shall be prevented by injunction, the contractor agrees to take back such goods or software and make every reasonable effort to assist the State in procuring substitute goods or software. If, in the sole opinion of the State, the return of such infringing goods or software makes the retention of other goods or software acquired from the contractor under this contract impractical, the State shall then have the option of terminating such contracts, or applicable portions thereof, without penalty or termination charge. The contractor agrees to take back such goods or software and refund any sums the State has paid contractor less any reasonable amount for use or damage.

Paragraph 46 of the General Provisions (01/01/01) is not applicable if the purchase order issued is for non-information technology services.

Paragraph 51 is added to the General Provisions (01/01/01) as follows:

51. UNION ORGANIZING (for all contracts, except fixed price contracts of \$50,000 or less) Contractor by signing this agreement hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this agreement.
- a) Contractor will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.
 - b) No state funds received under this agreement will be used to assist, promote or deter union organizing.
 - c) Contractor will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.
- If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that Contractor shall provide those records to the Attorney General upon request.

1 Contract Type

- a) Unless otherwise specified, the Statement of Work shall define and authorize work on a Fixed Price basis, with a guarantee of task completion.
- b) To the extent that additional work must be accomplished and is within the scope of the original agreement/order but not foreseen at the time a Purchase Order is executed, an amendment to the Purchase Order must be developed and properly executed prior to commencement of such additional work.

2 Personnel

- a) The following applies exclusively to Contractor personnel performing support type services:

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- 1) Contractor personnel shall perform their duties on the premises of the State, during the State's regular work days and normal work hours, except as may be specifically agreed to otherwise by the State, as outlined in the Statement of Work.
- 2) The State reserves the right to disapprove the continuing assignment of Contractor personnel provided to the State under this Contract. If the State exercises this right, and the Contractor cannot immediately replace the disapproved personnel, the parties agree to proceed with any equitable adjustment in schedule or other terms that may be affected thereby.
- 3) The Contractor will make every effort consistent with sound business practices to honor the specific requests of the State with regard to assignment of its employees; however the Contractor reserves the sole right to determine the assignment of its employees. If a Contractor employee is unable to perform due to illness, resignation, or other factors beyond the Contractor's control, the Contractor will make every reasonable effort to provide suitable substitute personnel.
- 4) In recognition of the fact that Contractor personnel providing services under this Contract may perform similar services from time to time for others, this Contract shall not prevent Contractor from performing such similar services or restrict Contractor from using the personnel provided to the State under this Contract, unless otherwise prohibited by law, providing that such use does not conflict with the performance of services under this Contract.

b) Key Personnel:

Contractor agrees that it shall not reassign any key person ("Key Person"), as identified in the applicable Statement of Work, to other functions that would require the alteration or reduction of such Key Person's contribution to, or involvement with, the activities described in the applicable Statement of Work, without the prior written consent of the State. If any Key Person's relationship with Contractor is terminated, or if any Key Person becomes disabled or physically incapacitated, and is unable to perform functions or responsibilities assigned to such Key Person in connection with this Agreement, Contractor shall promptly replace the Key Person with another person at least as qualified and technically experienced.

3 Responsibilities of the State

- a) The State shall provide office working facilities and equipment necessary for Contractor performance under this Contract, as described in the Statement of Work. Any special requirements (e.g., reprographic services, computer time, key data entry, etc.) shall be identified in the Statement of Work.
- b) The State is responsible for providing required information, data, documentation, and test data to facilitate the Contractor's performance of the work, and will provide such additional assistance and services as is specifically set forth in the Statement of Work.

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- c) Delay or failure by the State to fulfill the above described responsibilities, such that the Contractor is prevented from performing in accordance with the applicable Statement of Work, may result in additional costs to the State and deviations from previously agreed upon work schedules. Any claim for equitable adjustment to price, schedule or both shall result in a modification to the Statement of Work and be processed in accordance with the provision entitled "Contract Modification" in the General Provisions. Should the Contractor determine that a delay exists, or is probable due to failure of the State, the Contractor will notify the State in writing immediately.

4 Indemnification

Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses, with the exception of consequential damages, accruing or resulting to any and all contractors, subcontractors, suppliers, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this Contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Contract.

IF THIS CONTRACT IS FOR INFORMATION TECHNOLOGY, THE ABOVE INDEMNIFICATION IS DELETED AND THE FOLLOWING SUBSTITUTED THEREFORE:

Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses, with the exception of consequential damages, accruing or resulting to any and all contractors, subcontractors, suppliers, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this Contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Contract which are attributable to the negligence or intentionally tortuous acts of the Contractor provided that the Contractor is notified in writing within 30 days that the State has knowledge of such claims.

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5 Limitation of Liability

- a) Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to two times the contract price that is the subject matter of or is directly related to such performance of the Contractor (or nonperformance) that gives rise to the cause of action, unless a different limit of liability has been established in the Statement of Work, in which case, as provided under the Order of Precedence clause, the limit of liability shall be as established in the Statement of Work.
- b) The foregoing limitation of liability shall not apply to the payment of costs and damage awards referred to in the Paragraph of the General Provisions, entitled "Patent, Copyright, and Trade Secret Protection", to claims covered by other specific provisions calling for liquidated damages or specifying a different limit of liability, or to claims for injury to persons or damage to property caused by Contractor's negligence. This limitation of liability does not apply to the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this contract.
- c) State's liability for damages for any cause whatsoever, and regardless of the form of action whether in contract or in tort, excluding negligence, shall be limited to the greater of \$200,000 or the price stated herein for the subject matter directly related to the cause of action, unless a different limit of liability has been established in the Statement of Work, in which case, as provided under the Order of Precedence clause, the limit of liability shall be as established in the Statement of Work.
- d) In no event will either the Contractor or the State be liable for consequential damages even if notification has been given as to the possibility of such damages.

6 Warranty

Unless otherwise specified, the warranties contained in this contract begin after acceptance has occurred. Additionally, unless specified otherwise in the Statement of Work and except as provided for in sub-paragraph c) below, warranties shall be for a period of ninety (90) days.

- a) Contractor warrants that goods and services furnished hereunder will conform to the requirements of this contract (including all descriptions, specifications and drawings made a part hereof), and for purposes of this section, such goods will be merchantable, fit for their ordinary purposes as defined by their commercial specifications; or intended purposes as defined by the State's specifications set forth in this contract, and for hardware acquired under this contract, free from defects in materials and workmanship and to the extent not manufactured pursuant to detailed designs furnished by the State, such hardware will conform to its specifications. The State's approval of designs or specifications furnished by contractor shall not relieve the contractor of its obligations under this warranty.

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- b) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies and users of the goods or services.
- c) If Contractor recommends and implements an information technology system (System), Contractor warrants that the System (including any Contractor products and non-Contractor products contained in the System) meets its specifically defined completion criteria as specified in the Statement of Work. This System warranty is in addition to Contractor's other applicable warranties contained herein.

The warranty period for the System will be a fixed period, as specified in the Statement of Work, during which time Contractor warrants the System complies with its completion criteria, as specified in the Statement of Work. Such warranty period does not commence until after acceptance by the State, as described in the Statement of Work, such acceptance to be at the sole discretion of the State.

- d) If, within the warranty period specified in this contract or the Statement of Work, the State believes that the goods and services furnished hereunder do not conform with the foregoing warranties, the State shall promptly notify Contractor in writing, setting forth the nature of such claimed nonconformance. Contractor shall promptly investigate such nonconformance and advise the State of Contractor's planned corrective action. Thereafter, Contractor shall promptly cure such nonconformance by providing additional services or taking such other action as may be reasonably required to correct such nonconformance at no additional charge to the State.

7 Rights in Data

- a) All written technical communications and records originated or prepared by the Contractor pursuant to this Contract including papers, reports, charts, software, software modifications, and other documentation, but not including Contractor's administrative communications and records relating to this Contract shall be delivered to and shall become the exclusive property of the State and may be copyrighted by the State.
- b) The ideas, concepts, know-how, or techniques relating to HIPPA, developed during the course of this Contract by the Contractor, or jointly by the Contractor and the State, can be used by either party in any way it may deem appropriate.
- c) All inventions, discoveries or improvements of software and/or software modifications developed pursuant to this Contract shall be the property of the State. The State agrees to grant a nonexclusive royalty-free license for any such invention, discovery, or improvement to the Contractor or any other such person, and further agrees that the Contractor or any other such person may sublicense additional persons on the same royalty-free basis.
- d) This Contract shall not preclude the Contractor from developing materials outside this Contract which are competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this Contract.

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8 Protection of Proprietary Software and Other Proprietary Data

- a) State agrees that all software and related materials and/or documentation appropriately marked, and identified as proprietary in an Attachment to the Statement of Work, and furnished hereunder, are provided for State's exclusive use for the purposes of this Contract only. All such proprietary data shall remain the property of the Contractor. State agrees to take all reasonable steps to insure that such proprietary data are not disclosed to others, without prior written consent of the Contractor, subject to the California Public Records Act.
- b) The State will insure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed.
- c) The State agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed software and other proprietary data to satisfy its obligations under this Contract with respect to use, copying, modification, protection and security of proprietary software and other proprietary data.

9 Liquidated Damages (must be identified in the Statement of Work for this paragraph to be applicable)

a) General

In the event that the Contractor fails to deliver the goods and/or services as specified in the Statement of Work, the parties agree that the delay will interfere with the proper implementation of the State's programs, to the loss and damage of the State. From the nature of the case, it would be impracticable and extremely difficult to fix the actual damages sustained in the event of any such delay. The State and Contractor, therefore, presume that in the event of any such delay the amount of damage which will be sustained from a delay will be the amounts set forth in the Statement of Work, and the State and the Contractor agree that in the event of any such delay, the Contractor shall pay such amounts as liquidated damages and not as a penalty. Amounts due the State as liquidated damages may be deducted by the State from any money payable to the Contractor. The State shall notify the Contractor in writing of any claim for liquidated damages pursuant to this paragraph on or before the date State deducts such sums from money payable to the Contractor.

b) Delivery Delays

If the Contractor does not deliver all the deliverables listed on the Statement of Work ready for use in substantial accordance with the Contractor's specifications, on or before the Delivery Dates specified in the Statement of Work, the Contractor shall be liable for liquidated damages in the amounts specified in the Statement of Work, in lieu of all other damages for such nondelivery. Liquidated damages shall accrue for each calendar day between the Delivery Date specified and the actual date of the delivery of such deliverables or for 180 days, whichever occurs first.

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10 Invoicing and Payment for Services

- a) During the execution of each Task Schedule which involves the delivery to the State of identified deliverable items, the Contractor may submit periodically to the State invoices reflecting a pro-rata cost of the task schedules, determined on the basis of the lesser of either:
- 1) The number of tasks provided to the State divided by the total number of tasks required to be delivered to the State, less the percentage specified in the Statement of Work, less any amounts previously invoiced; or
 - 2) The number of work-hours expended by the Contractor in the performance of the task divided by the number of work hours scheduled for the task, less the percentage specified in the Statement of Work, less any amounts previously invoiced.
 - 3) For either 1) or 2) above, a withhold of no less than 10 percent (10%), or as otherwise identified in the Statement of Work, and a Performance Bond, equating to a minimum of fifty percent (50%) or as otherwise specified in the Statement of Work will be required. Performance Bond language must be acceptable to the State, and the payment therefore will be by the Contractor.
- b) For those Task Schedules which do not involve delivery to the State of identified deliverable items, but which are of a continuing nature, the Contractor may submit invoices reflecting a pro-rata cost of the Task Schedule, less the percentage specified in the Statement of Work, but no less than 10 percent (10%), less any amount previously invoiced. Actual progress payment amounts for such Task Schedules must be based on at least equivalent services rendered, and to the extent practicable, will be keyed to clearly identifiable stages of progress as reflected in written reports submitted with the invoices. For Task Schedules to be paid in this manner, a Performance Bond equating to a minimum of fifty percent (50%) of the total value of the contract will be required. Such Performance Bond will be language acceptable to the State, and the payment therefore will be by the Contractor.
- c) Upon completion of a Task Schedule to the satisfaction of the State, the full charge for such Task Schedule, less amounts previously invoiced to the State may be submitted for payment. However, this is only applicable when the benefits of completion of a Task Schedule can be fully utilized without completion of a subsequent Task Schedule(s).
- d) Invoices prepared in accordance with this provision will not be submitted more frequently than monthly to the State.
- e) In the aggregate, invoices reflecting progress payments will not exceed the ceiling amount of the Contract minus (100 percent minus the percentage identified in the Statement of Work), with the balance to be invoiced upon satisfactory completion of the Contract.

11 Contractor Evaluation

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In accordance with the California Government Code, contractor performance evaluation will be completed within the guidelines of the State Contracting Manual, Section 9.08. The State contracting agency, upon contract completion, will complete and forward the contractor evaluation to the Department of General Services.

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IF THIS CONTRACT IS FOR INFORMATION TECHNOLOGY SERVICES AND/OR SOFTWARE, THE FOLLOWING ADDITIONAL TERMS AND CONDITIONS APPLY.

IF CONTRACTOR IS PROVIDING SERVICES, BUT ONLY RECOMMENDING THE ACQUISITION OF SOFTWARE PRODUCTS, CONTRACTOR AGREES TO WORK WITH THE SOFTWARE SUPPLIER TO ENTER INTO AN AGREEMENT CONTAINING TERMS AND CONDITIONS THAT ARE AGREEABLE TO THE STATE. UNLESS OTHERWISE AGREED TO BY THE STATE AND SPECIFIED IN THE STATEMENT OF WORK, PAYMENT FOR SOFTWARE WILL NOT BE MADE UNTIL THE SOFTWARE HAS BEEN ACCEPTED BY THE STATE IN ACCORDANCE WITH THE ACCEPTANCE TESTING CRITERIA IDENTIFIED IN THE STATEMENT OF WORK.

12 Definitions

- a) Acceptance Tests—Those tests performed during the Performance Period which are intended to determine compliance of equipment and software with the specifications and all other attachments incorporated herein by reference and to determine the reliability of the equipment.
- b) Application Program—A computer program which is intended to be executed for the purpose of performing useful work for the user of the information being processed. Application programs are developed or otherwise acquired by the user of the hardware/software system, but they may be supplied by the Contractor.
- c) Designated CPU(s)—For each product, the term “Designated CPU(s)”, if applicable, means the central processing unit of the computers or the server unit, including any associated peripheral units. If no specific “Designated CPU(s)” are specified on the contract, the term shall mean any and all CPUs located at the site specified therein.
- d) Documentation—Nonproprietary manuals and other printed materials which are necessary or useful to the State in its use or maintenance of the equipment or software provided hereunder.
- e) Equipment—An all-inclusive term which refers either to individual machines or to a complete data processing system or subsystem, including its hardware and operating software (if any).
- f) Hardware—Usually refers to computer equipment and is contrasted with software. See also Equipment.
- g) Information Technology – includes, but is not limited to, all electronic technology systems and services, automated information handling, system design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite

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system controls, simulation, electronic commerce, and all related interactions between people and machines.

- h) Machine—An individual unit of a data processing system or subsystem, separately identified by a type and/or model number, comprised of but not limited to mechanical, electro-mechanical, and electronic parts, micro code, and special features installed thereon and including any necessary software, e.g., central processing unit, memory module, tape unit, card reader, etc.
- i) Operating Software—Those routines, whether or not identified as program products, that reside in the equipment and are required for the equipment to perform its intended function(s), and which interface the operator, other Contractor-supplied programs, and user programs to the equipment.
- j) Operational Use Time—For performance measurement purposes, that time during which equipment is in actual operation by the State. For maintenance operational use time purposes, that time during which equipment is in actual operation and is not synonymous with power on time.
- k) Performance Testing Period—A period of time during which the State, by appropriate tests and production runs, evaluates the performance of newly installed equipment and software prior to its acceptance by the State.
- l) Programming Aids—Contractor-supplied programs and routines executable on the Contractor's equipment which assists a programmer in the development of applications including language processors, sorts, communications modules, data base management systems, and utility routines, (tape-to-disk routines, disk-to-print routines, etc.).
- m) Program Product—Programs, routines, subroutines, and related items which are proprietary to the Contractor and which are licensed to the State for its use, usually on the basis of separately stated charges and appropriate contractual provisions.
- n) Site License—For each product, the term "Site License" shall mean the license established upon acquisition of the applicable number of copies of such product and payment of the applicable license fees as set forth in the Statement of Work.
- o) Software—An all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including operating software, programming aids, application programs, and program products.
- p) Software Failure—A malfunction in the Contractor-supplied software, other than operating software, which prevents the accomplishment of work, even though the equipment (including its operating software) may still be capable of operating properly. For operating software failure, see definition of equipment failure.

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- q) System – The complete collection of hardware, software and services as described in this Contract, integrated and functioning together, and performing in accordance with this Contract.

13 Documentation

The Contractor agrees to provide to the State, at no charge, a number of all nonproprietary manuals and other printed materials, as described within the Statement of Work, and updated versions thereof, which are necessary or useful to the State in its use of the software provided hereunder. The Contractor agrees to provide additional documentation at prices not in excess of charges made by the Contractor to its other customers for similar documentation.

14 License Grant

- a) Contractor hereby grants to the State and the State accepts from Contractor, subject to the terms and conditions of this Contract, a non-exclusive, non-transferable license to use the Software Products listed in Statement of Work of this Contract (hereinafter referred to as "Software Products").
- b) State may use the Software Products in the conduct of its own business, and any division thereof.
- c) The license granted above authorizes the State to use the Software Products in machine-readable form on the computer system located at the site(s) specified in the Statement of Work. Said computer system and its associated units (collectively referred to as CPU) are as designated in the Statement of Work. If the designated CPU is inoperative due to malfunction, the license herein granted shall be temporarily extended to authorize the State to use the Software Products, in machine-readable form, on any other State CPU until the designated CPU is returned to operation.
- d) By prior written notice, the State may redesignate the CPU in which the Software Products are to be used. The redesignation will be effective upon the date specified in the notice of redesignation.
- e) Except as provided herein, the State may not disassemble, reverse compile or use other means to obtain all or part of the source code without prior written consent of the Contractor.

15 Encryption/CPU ID Authorization Codes

- a) When Encryption/CPU Identification (ID) authorization codes are required to operate the software products, the Contractor will provide all codes to the State with delivery of the software.
- b) In case of an inoperative CPU as defined in paragraph 15.c) above, Contractor will provide a temporary encryption/CPU ID authorization code to the State for use on a temporarily authorized CPU until the designated CPU is returned to operation.

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- c) When changes in designated CPUs occur, the State will notify the Contractor via telephone and/or facsimile/e-mail of such change. Upon receipt of such notice, Contractor will issue via telephone and/or facsimile/e-mail to the State within 24 hours, a temporary encryption ID authorization code for use on the newly designated CPU until such time as a permanent code is assigned.

16 Fees and Charges

Upon acceptance of Software by State, in accordance with Paragraphs 18 herein and the Statement of Work, State will pay the license fee or recurring charge for the Software Products as set forth in Statement of Work. Charges will commence on the Acceptance Date as established in the Statement of Work. The Contractor shall render invoices for recurring charges or single charges in the month following the month in which the charges accrue.

17 Maintenance

- a) The correction of any residual errors in any Software Product, after the Warranty Period, that may be discovered by Contractor or by the State will be considered maintenance. Such maintenance will be performed by Contractor without additional charge for the duration of this contract. Suspected errors discovered by the State in the Software Products will be handled in one of the following procedures:

- 1) A listing of the output and a copy of the identical input data in machine-readable form will be submitted to Contractor along with a completed copy of the appropriate Contractor information form and, if appropriate, a listing of the contents of the memory of the CPU at the time the error condition was noted.

Errors in the Software Product as verified by Contractor will be corrected by providing a new copy of said Software Product (or of the affected portions) in machine-readable form, or Contractor will provide a patch or an upgrade to correct the errors.

The Contractor shall attempt to correct Software Product errors within a reasonable time; or

- 2) As mutually agreed to and specified in the Statement of Work.
- b) Contractor will be available to assist the State in isolating and correcting error conditions caused by the State's particular hardware or operating system at rates in accordance with the Statement of Work.

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- c) If Contractor is called upon by State to correct an error caused by State's negligence, modification by State, State supplied data, machine or operator failure, or due to any other cause not inherent in the original Software Products, Contractor reserves the right to charge State for such service on a time and material basis, or rates in accordance with the Statement of Work.

18 Acceptance of Software

The State shall be deemed to have accepted each Software Product unless State, within thirty (30) days from the Installation Date or as otherwise specified in the Statement of Work, gives Contractor written notice to the effect that the Software Product fails to conform to the functional and performance specifications of this Contract. Contractor will, upon receipt of such notice, investigate the reported deficiencies. The rights of the parties shall be governed by the following:

- a) If it is found that the Software Product fails to conform to the Contract requirements, and Contractor is unable to remedy the deficiency within the timeframe identified in the Statement of Work, State shall return all material furnished hereunder. The State shall have the option of accepting substitute software, terminating this portion of the contract, or terminating this contract in its entirety and placing the Contractor in default.
- b) If it is found that the Software Product fails to conform to the Contract requirements and the Contractor within sixty (60) days, or as otherwise identified in the Statement of Work, of receipt of the above said notice corrects the deficiencies in the Software Product, the State will provide Contractor with written acknowledgement of its acceptance of said Software Product.
- c) If it is found that the Software Product does, in fact, conform to the Contract requirements, the State shall reimburse Contractor for the time and material cost of the investigation at Contractor's rates in accordance with the Statement of Work.

19 Right To Copy or Modify

- a) Any Software Product provided by Contractor in machine-readable form may be copied, in whole or in part, in printed or machine-readable form for use by the State with the designated CPU, to perform one-time benchmark tests, for archival or emergency restart purposes, to replace a worn copy, to understand the contents of such machine-readable material, or to modify the Software Product as provided below; provided, however, that no more than the number of printed copies and machine-readable copies as specified in the Statement of Work will be in existence under this Contract at any one time without prior written consent from Contractor. Such consent shall not be unreasonably withheld by the Contractor. The original, and any copies of the Software Product, in whole or in part, which are made hereunder shall be the property of the Contractor.

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- b) The State agrees to keep any such copies and the original at a mutually designated State location, except that the State may transport or transmit a copy of the original of any Software Product to another State location for backup use when required by CPU malfunction, provided the copy or the original is destroyed or returned to the designated location when the malfunction is corrected.
- c) The State may modify any non-personal computer Software Product, in machine-readable form, for its own use and merge it into other program material. Any portion of the Software Product included in any merged program material shall be used only on the designated CPUs and shall be subject to the terms and conditions of this Contract.

20 Future Releases

If improved versions of any Software Product are developed by Contractor, and are made available to other licensees, they will be made available to the State at the State's option according to the specifics contained in the Statement of Work. If no specifications are contained in the Statement of Work, Contractor will make improved versions of the Software Product available at prices not in excess of prices charged to its other commercial customers for the same Product.

21 Acceptance Testing for Software (other than Operating Software)

- a) Acceptance testing is required for all Contractor-supplied software supplied under this contract and listed on the Statement of Work, including all software initially installed, improved versions (new releases) of this software, any such software which has been altered (modified) by the Contractor to satisfy State requirements, and any substitute software provided by the Contractor in lieu thereof, unless Statement of Work provides otherwise. The purpose of the Acceptance Test is to ensure that the software operates in substantial accord with the Contractor's technical specifications and meets the State's performance specifications. The specific procedures for the accomplishment of such tests are contained in the Statement of Work.
- b) When Contractor has notified the State in writing that the software is installed and ready for use, or if installation is not required by Contractor, when software has been delivered to State, the State shall begin Acceptance Testing on the first State workday following such certification or delivery, unless otherwise provided in the Statement of Work.
- c) If successful completion of the Acceptance Test is not attained within the timeframe as specified in the Statement of Work, the State shall have the option to request substitute software, cancel that portion of the contract which relates to the unaccepted software, or continue the Acceptance Tests. The State's option shall remain in effect until such time as the tests are successfully performed, or the timeframe as specified in the Statement of Work, whichever occurs first. If the Acceptance Tests have not been successfully performed prior to the expiration of the timeframe specified in the Statement of Work, that portion of the contract which relates to the unaccepted software shall be canceled, unless both parties agree to the continuation of the tests or to the delivery of substitute software. If the unaccepted software (or its functional equivalent) is crucial to the

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accomplishment of the work for which the equipment was acquired, and is so identified in the Statement of Work, the State shall have the option of terminating the entire contract in accordance with the Termination for Default provision in the contract.

- d) Unless otherwise provided in the Statement of Work, software shall not be accepted by the State and no charges associated with such software shall be paid by the State until the software has satisfactorily completed the Acceptance Tests. Immediately upon successful completion of the Acceptance Testing, the State shall notify the Contractor in writing of the acceptance of the software and authorize appropriate payment.

IF THIS CONTRACT IS FEDERALLY FUNDED, THE FOLLOWING ADDITIONAL TERMS AND CONDITIONS APPLY.

- 22. It is mutually understood between the parties that this contract may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.
- 23. This contract is valid and enforceable only if sufficient funds are made available to the state by the United State Government for the fiscal year ____ for the purpose of this program. In addition, this contract is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this contract in any manner.
- 24. The parties mutually agree that if the Congress does not appropriate sufficient funds for the program, this contract shall be amended to reflect any reduction in funds.
- 25. The department has the option to void the contract under 30-day cancellation clause or to amend the contract to reflect any reduction for funds.